

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 08-0673V

Filed: 9 September 2009

* * * * *	*
JIMMY LEVINER,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
* * * * *	*

Elizabeth Martin Muldowney, Esq., Rawls & McNelis, P.C., Richmond, Virginia, for Petitioner;
Melonie J. McCall, Esq., United States Department of Justice, Washington, District of Columbia,
for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 20 August 2009, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Jimmy Leviner, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. Jimmy Leviner, Petitioner, filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34 (the "Vaccine Program"). The Petition seeks compensation for injuries allegedly related to Petitioner's receipt of the influenza vaccine, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received his influenza vaccine on 11 October 2006.
3. The vaccine was administered within the United States.

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

4. Petitioner alleges that he sustained the first symptom or manifestation of the onset of chronic regional pain syndrome approximately fourteen hours after his receipt of the influenza vaccination when he began to experience pain and immobility in his left shoulder. He further alleges that he continues to suffer pain and immobility of his left shoulder as sequela of his injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

6. Respondent denies that Petitioner's alleged injury was vaccine-related, and denies that he suffers any current disabilities that are sequelae of his alleged injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that [this Decision] should be entered [by the Undersigned] awarding the compensation described in paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payment:

A lump sum of \$100,000.00 in the form of a check payable to Petitioner, which amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner would be entitled.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after Petitioner has filed a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before [the Undersigned] to award reasonable attorneys' fees and costs incurred in proceeding upon this Petition.

10. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorneys' fees and litigation costs, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraphs 8 and 9, Petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Petitioner, resulting from, or alleged to have resulted from, the influenza vaccination administered to him on 11 October 2006, as alleged by Petitioner in a petition for vaccine compensation filed on 24 September 2008, in the United States Court of Federal Claims as petition No. 08-0673V.

13. If Petitioner should die prior to receiving the payment described in paragraph 8, [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

15. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

s/ Richard B. Abell
Richard B. Abell
Special Master